

Remarks

Claims 1, 4, 6-11 and 14 are currently pending in this application. Claims 1 and 6 are independent. Claims 1, 4, 6-11 and 14 are currently amended to correct their form.

The Office Action objects to claim 1 because “the ‘,’ after ‘having should be deleted.” Applicant has deleted this “,” in accordance with the Examiner’s suggestion, thereby obviating the objection.

Rejection Under 35 U.S.C. § 102(b)

Claims 1-4, 6, 7 and 13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gilmour et al., U.S. Patent No. 6,155,998 (“Gilmour”).

Independent claim 6 has been amended to recite a walker, comprising (i) a frame having at least one set of apertures, and (ii) at least one chafe comprising a member having a slot therein, a stud, and connection means connecting the stud and member having the slot therein, (iii) wherein each aperture is shaped so that the stud can be passed therethrough, held in the aperture and released therefrom. (emphasis added) Gilmour does not teach several limitations of claim 6, and therefore fails to anticipate claim 6 and those claims that depend therefrom.

Gilmour provides a walker having a frame having sets of apertures 34 wherein each aperture is shaped so that the stud can be passed therethrough, held in the aperture and released therefrom. By contrast, Gilmour’s apertures 34 are not shaped so that the stud 35 “can be passed therethrough, held in the aperture and released therefrom,” as recited in independent claim 6, as amended. Although Gilmour provides apertures 34 comprising elongated slots, Gilmour’s stud

35 (i.e., “fixing pin 35”) is not dimensioned to be passed through the slot 34, held therein, and released therefrom, as required by claim 6. Because Gilmour fails to disclose a walker, comprising a frame having at least one set of apertures, wherein each aperture is shaped so that the stud can be passed therethrough, held in the aperture and released therefrom, it does not disclose each and every limitation of independent claim 6.

In view of the above, it is respectfully submitted that Gilmour fails to anticipate claim 6, and claims 1, 4, 7-11 and 14, which depend therefrom.

Additionally, with regard to claim 1, Gilmour’s separate fixing pin is clearly not formed as a unitary construction with the member, connection means. The Office Action sets forth that “how the stud is formed does not affect the patentability of the apparatus as a whole.” However this argument is spurious. In accordance with MPEP 2106 II (C), “when evaluating the scope of a claim, every limitation in the claim must be considered.” Moreover, “USPTO personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation.” There are no patent rules or statutes which indicate that the USPTO may ignore certain limitations of an apparatus claim merely because the limitations pertain to the manner in which a claim element is formed.

Rejection under 15 U.S.C. § 103(a)

Claims 8-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gilmour in view of Plath et al., U.S. Patent No. 5,311,972 (“Plath”).

As set forth hereinabove, Gilmour fails to disclose the invention recited in independent claim 6. Plath fails to cure the stated deficiencies of Gilmour. Moreover, Plath may not be properly combined with Gilmour for at least the reasons set forth hereinbelow.

Plath is concerned with the art of luggage design. One of ordinary skill in the art of medical devices, specifically orthopedic walkers, would not be motivated to look to the field of luggage design to solve problems encountered in designing orthopedic walkers. Furthermore, Plath fails to solve the problem encountered by the present invention. Plath solves the problem of attaching a piece of auxiliary luggage to a piece of main luggage (see, e.g., Col. 2, lines 1-10), and in Plath there is no need to provide for the adjustment of the position of the auxiliary luggage. By contrast, the present invention is concerned with adapting straps to a variety of positions to fit over bandaged feet following surgery or injury (see, e.g., Paragraph 5), hence, the present invention requires allowing for a variety of different strap positions (see, e.g., Paragraph 13). Because Plath is an invention in an entirely different field of art and deals with an entirely different problem than that of the present invention, one of ordinary skill in the art would not have looked to Plath while designing its orthopedic walker.

Plath does not contain a suggestion or motivation to combine with Gilmour, but rather teaches away from the combination. The present invention's orientation of the stud and aperture arrangement differs substantially from Plath. Plath teaches a stud extending outwardly from an exterior surface of the luggage (see, e.g., Col. 2, lines 31-34) and a clasp including a socket (see, e.g., Col 2, lines 35-34). In the present invention, the stud is on the chafe (see, e.g., Paragraph 11) and the aperture is on the walker frame (see, e.g., Paragraph 13), rather than having the stud on the walker frame and the aperture in the chafe as might be suggested by Plath. Plath teaches

away from the orientation in the present invention because the socket in Plath could not be mounted onto the exterior surfaces of the luggage without the insertion of an undesirable hole into the luggage, exposing the contents to the elements. Furthermore, mounting the socket in Plath to the exterior surface of the luggage would make it harder for users to unhitch the clasp, contravening Plath's stated purpose of improving the ease of hitching and unhitching auxiliary luggage (see, e.g., Col. 1, lines 64-68).

Because Plath concerns a different field of invention and is directed at solving a different problem, one of ordinary skill in the art would not look to Plath while designing an orthopedic walker. For this reason, and because Plath teaches away from the principles of Gilmour, the combination of Gilmour and Plath is improper.

In view of the above it is respectfully requested that the rejection of claims 8-10 as unpatentable over Gilmour in view of Plath be withdrawn.

Claims 11 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gilmour and Plath in view of Coy et al., U.S. Patent No. 5,836,626 ("Coy").

Gilmour in view of Plath is distinguished from the invention as set for above. Coy fails to cure the deficiencies of Gilmour and Plath. In addition, Coy does not teach a slot having an upper edge formed to a saw tooth pattern, the edges of each upwardly extending part, in use, being such that the head of the stud will be retained therein, as recited in claims 11 and 14.

The saw-toothed pattern is not a mere design consideration as it accomplishes two stated purposes. First, the saw-toothed pattern allows for the retention of the stud head in the upper edges of the saw-toothed pattern (see, e.g., Claims 11 and 14; Paragraphs 18, 35 and 37).

Second, the straps themselves can be passed through the saw-toothed slot, where the teeth will effect a gripping motion on the strap, helping to maintain the strap in the position that it has been originally located (see, e.g., Paragraph 37).

Additionally, Coy may not be properly combined with Gilmour for at least the following reasons. Coy is concerned with the art of door locks. One of ordinary skill in the art of orthopedic walkers would not be motivated to look to the field of door locks for solutions to the problems encountered in designing an orthopedic walker. The notched slot (see, e.g., Fig. 2, no. 22, 22) in Coy only solves the problem of allowing a securement member (see, e.g., Fig. 2, no. 17) to slide along a plate (see, e.g., Fig. 2, no. 14) and fails to solve the problem of allowing chafe insertion along a slot or alternatively allowing insertion of a strap in the slot. One of ordinary skill in the art of orthopedic walkers simply would not be expected to look to a solution of allowing a securement member to slide along a plate in a door lock when trying to solve the problem of allowing chafe insertion or alternative insertion of a strap in a slot in an orthopedic walker frame.

Coy teaches a slot (see, e.g., Fig. 3, no. 22) with notches (see, e.g., Fig. 3, no. 21) with parallel sides (see, e.g., Fig. 3, no. 21) to secure a retaining pin (see, e.g., Fig. 3, no. 28). The present invention requires a slot with a saw-toothed upper edge to allow for the retention of the stud of a chafe and alternatively to allow the insertion of a strap (see, e.g., Claims 11 and 14; Paragraphs 18, 35 and 37). The use of notches with parallel sides in the present invention would not allow for insertion of the stud of a chafe at the lower part of the notched edge and retention of the head of the stud at the upper part of the edge. Also, Coy does not teach the alternative insertion of a strap into the slot. Rather, the notches present in Coy (see, e.g., Fig. 3, no. 21)

would damage a strap if it were inserted into the slot (see, e.g., Fig. 3, no. 22). Moreover, use of a triangular saw-toothed pattern would not work in Coy. Use of a triangular saw-toothed pattern in Coy would allow lateral force on the securement member (see, e.g., Fig. 3, no. 17) to be transferred into compressive force on the spring (see, e.g., Fig. 3, no. 26), thereby allowing the retaining pin (see, e.g., Fig. 3, no. 28) to leave its notch, thereby allowing the door to open, and the lock to fail. One of ordinary skill in the art would recognize that Coy and the present invention are not incompatible, and would expect the use of Coy to fail in the present invention.

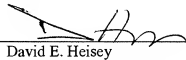
In view of the above, it is respectfully requested that the rejection of claims 11 and 14 as unpatentable over Gilmour in view of Plath in view of Coy be withdrawn.

Conclusion

Based on the foregoing, favorable reconsideration and allowance of claims 1, 4, 6-11 and 14 is solicited. If necessary, the Commissioner is hereby authorized in this and concurrent replies to charge payment (or credit any overpayment) to Deposit Account No. 19-1853 for any additional required fees.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "David E. Heisey", is written over a horizontal line.

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